

**State Water Commission
Budget 770
House Bill Nos. 1020, 1269**

	FTE Positions	General Fund	Other Funds	Total
2013-15 legislative appropriation	90.00	\$0	\$859,045,805	\$859,045,805
2011-13 legislative appropriation	<u>87.00</u>	<u>14,995,199</u>	<u>494,420,221</u>	<u>509,415,420</u>
2013-15 appropriation increase (decrease) to 2011-13 appropriation	3.00	(\$14,995,199)	\$364,625,584	\$349,630,385

Item Description

FTE positions - The Legislative Assembly authorized the State Water Commission a total of 90 FTE positions, 3 FTE positions more than the 2011-13 biennium. The Legislative Assembly did not change the executive recommendation to add 1 FTE water resource engineer position to address the increase in water permit applications, 1 FTE water resource project manager position to address the backlog of conditional water permit inspections, and 1 FTE engineering technician position to support the operations of the Devils Lake Outlets.

Accrued leave payments - In Section 1 of House Bill No. 1020, the Legislative Assembly identified \$325,774 from other funds for accrued leave payments.

One-time funding - In Section 2 of House Bill No. 1020, the Legislative Assembly identified \$288,200 from the resources trust fund as one-time funding for an excavator (\$243,200) and office space renovations (\$45,000).

Sovereign lands enforcement grant - The Legislative Assembly in Section 3 of House Bill No. 1020 directs the State Water Commission to provide a grant of \$135,000 from the resources trust fund to the Game and Fish Department for law enforcement activities on sovereign lands in the state.

Resources trust fund and water development trust fund - In Section 4 of House Bill No. 1020, the Legislative Assembly provides that in addition to the amounts appropriated to the State Water Commission from the resources trust fund and the water development trust fund, any additional amounts that become available in those funds are appropriated, subject to Budget Section approval, to the State Water Commission for the purpose of defraying the expenses of the commission for the 2013-15 biennium.

Status/Result

The State Water Commission filled the water resource engineer position in September 2013, the water resource project manager position in August 2013, and the engineering technician position in April 2014.

The State Water Commission has spent \$8 from the accrued leave payments line item related to employee turnover through April 2014. The commission anticipates funding authority from the accrued leave payments line item will be used for salaries and wages during the 2013-15 biennium.

Office renovations are not yet complete and cost estimates for the renovations are not available. The State Water Commission has not yet purchased the excavator.

As of April 30, 2014, the State Water Commission has not received any requests for reimbursement from the Game and Fish Department.

The Legislative Assembly in House Bill No. 1269 provided \$31,350,000 from the resources trust fund for additional construction on the Southwest Pipeline Project and for grants to advance projects, including Stutsman County Rural Water, North Central Rural Water Consortium, and McLean-Sheridan Rural Water Projects. This bill, approved with an emergency clause, expedited the funding for these projects. Because these projects were also included in the appropriation for projects provided for in House Bill No. 1020, the State Water Commission was able to approve additional projects totaling approximately \$32 million. Funding was approved for infrastructure projects in the cities of Dickinson (\$18.4 million), Watford City (\$6.7 million), and Williston (\$7 million).

Through March 2014, funding available in the resources trust fund is approximately \$115 million more than appropriated during the 2013 legislative session. The State Water Commission anticipates seeking Budget Section approval for additional authority.

Through December 2013, the Bank of North Dakota has issued \$5,906,000 in loans to the Western Area Water Supply Authority. In addition, as of April 2014, the State Water Commission has budgeted \$79 million for the Western Area Water Supply Project. The commission has approved \$20 million for loans and \$20 million for grants to the Western Area Water Supply Authority.

Western Area Water Supply Authority - Bank of North Dakota loan - The Legislative Assembly in Section 5 of House Bill No. 1020 directs the Bank of North Dakota to provide a \$40 million loan to the Western Area Water Supply Authority for construction of the project. This section, as amended in 2013 House Bill No. 1015, provides the loan must be added to and merged into previous loans as agreed upon by the Industrial Commission and the Bank.

Fargo flood control - The Legislative Assembly in House Bill No. 1020 provided for the following legislative intent items relating to the Fargo flood control project:

- **Fargo flood control project construction limitation** - Section 7 limits Fargo flood control project construction south of the city of Fargo to ring dikes and levees until after July 1, 2014.
- **Fargo flood control project funding** - Section 8 provides funding designated by Legislative Assemblies in 2009, 2011, and 2013 for Fargo flood control is only for levee and dike protection until the Fargo flood control project receives federal authorization, a project partnership agreement is executed, a federal appropriation is provided for project construction, and the budget for the Fargo flood control project is approved by the State Water Commission.
- **Fargo flood control project funding agreement** - Section 9 provides that prior to the State Water Commission expending any state cost-sharing funds, the local Fargo flood control sponsor and the State Water Commission must enter a cost-sharing agreement. The agreement must provide for the exclusion of state cost-sharing for components of the project identified as recreational by the Army Corps of Engineers. The agreement must also provide for the exclusion of state cost-sharing relating to funds expected to be provided for the project by nonfederal entities outside the state of North Dakota. An advance funding agreement between the Army Corps of Engineers and the local Fargo flood control sponsor must precede any state funding used to advance construction work considered to be a federal responsibility.
- **Fargo flood control project funding exemption** - Section 11 provides that of the funds appropriated in the water and atmospheric resources line item for the 2013-15 biennium, \$100 million is for Fargo flood control projects to provide a total of \$175 million. Any funds not spent by June 30, 2015, are not subject to North Dakota Century Code Section 54-44.1-11 and must be continued into the next or subsequent

The permit application for the Oxbow-Hickson-Bakke ring dike project has been received and is currently under review by the State Engineer.

In May 2014 the Water Resources Reform and Development Act was approved by the both the United States House of Representatives and Senate. The Act includes authorization for the Fargo-Moorhead Area Diversion Project and is awaiting the President's signature. However, federal funding for the project has not yet been appropriated.

The State Water Commission approved amendments to the July 2011 cost participation agreement with the city of Fargo in January 2014. Amendments were approved to address the acquisition and reselling of property, exclusion of state cost-sharing for components of the project identified as recreational, and the exclusion of state cost-sharing relating to funds expected to be provided for the project by nonfederal entities outside of North Dakota.

Through March 2014, the State Water Commission has received cost reports related to Fargo flood control totaling \$96 million, of which the State Water Commission has reimbursed \$44.8 million, leaving \$130.2 million available for Fargo flood control. The following table is a summary of Fargo flood control costs reported to the State Water Commission by the city of Fargo through March 2014:

bienniums and may be expended only for Fargo flood control projects, including levees and dikes. In addition, except as otherwise provided, these funds may be used only for land purchases and construction, including right-of-way acquisition costs, and may not be used for the purchase of dwellings. No more than 10 percent of these funds may be used for engineering, legal, planning, or other similar purposes. The city of Fargo, Cass County, and the Cass County Joint Water Resource District must approve any expenditures made under this section. Costs incurred by nonstate entities for dwellings or other real property which are not paid by state funds are eligible for application by the nonstate entity for cost-sharing with the state. In addition Section 10 provides legislative intent that the state provide one-half of the local cost-share of constructing a federally authorized Fargo flood control project and that total Fargo flood control project funding to be provided by the state not exceed \$450 million. The Legislative Assembly provided the \$275 million yet to be designated by the state for the Fargo flood control project be made available in equal installments over the next four bienniums.

- **Fargo flood control - Reports to the Budget Section** - Section 15 requires the Fargo-Moorhead Area Diversion Authority Board report to the Budget Section biannually regarding an update on congressional authorization of the diversion project and the status of the self-insured crop insurance pool; mitigation efforts, alternatives, and costs; easements; and the project budget. The MNDak Upstream Coalition must also report to the Budget Section biannually regarding an update on the impacts of the Fargo flood control project and mitigation efforts, alternatives, and costs.

Red River Valley Water Supply Project legislative intent - The Legislative Assembly in Section 12 of House Bill No. 1020 provides legislative intent that of the funds appropriated in the water and atmospheric resources line item for the 2013-15 biennium, \$11 million is for the Red River Valley Water Supply Project.

Bond payments legislative intent - The Legislative Assembly in Section 13 of House Bill No. 1020 allows the State Water Commission to use funding in the resources trust fund to pay off or defease outstanding bond issues when the balance in the resources trust fund exceeds \$287 million. Of the funds appropriated to the commission in the water and atmospheric resources line item, \$60 million from the resources trust fund is provided to the commission for the purpose of paying off or defeasing the commission's outstanding bond issues. The contingent funding from the resources trust fund (\$60 million) and funding from the water development trust fund provided for bond payments (\$16.9 million) totaling \$76.9 million would be

	Total Reported Cost
Dwellings	\$39,959,300
Land	11,885,994
Construction	31,791,172
Engineering, legal, and administrative	12,281,750
Total	\$95,918,216

The Budget Section will receive reports from the Fargo-Moorhead Area Diversion Authority Board and the MNDak Upstream Coalition in September 2014.

The State Water Commission has approved \$375,000 to hire a consultant to complete a value engineering study of the Red River Valley Water Supply Project. The commission anticipates the report will be available by June 2014.

The State Water Commission anticipates five bond issues will be paid off in July 2014. To comply with bond document provisions, the remaining three bond issues will be defeased later in the biennium.

available to defease the commission's outstanding bond issues of \$75,250,000 and pay related fees.

State Water Commission priority projects list - Reports to the Budget Section - The Legislative Assembly in Section 14 of House Bill No. 1020 requires the State Water Commission to report to the Budget Section every six months regarding any changes made to the water project priority list presented to the Legislative Assembly in 2013.

Community water facility loan fund - In Section 16 of House Bill No. 1020, the Legislative Assembly amended Section 6-09.5-03 to increase the authorized ceiling of the community water facility revolving loan fund administered by the Bank of North Dakota to supplement United States Department of Agriculture Rural Development financing for community water projects by \$15 million to provide a maximum of \$25 million.

Water-Related Topics Overview Committee - In Section 17 of House Bill No. 1020, the Legislative Assembly amended Section 54-35-02.7 related to the Water-Related Topics Overview Committee, as amended by 2013 Senate Bill No. 2233, to provide the committee study policies regarding the development and financing of municipal projects, including water treatment plants; pipelines, including pipeline expansion; public and industrial use of water; cost analysis of future project development; ongoing maintenance cost of current and future projects; and technology, including the use of technology for permitting and electronic metering. In addition, the amendments require the State Water Commission and the State Engineer to assist the committee in developing a schedule of priorities with respect to water projects.

The Legislative Assembly also approved 2013 Senate Bill No. 2048 which requires the State Water Commission to adopt rules for governing the review and recommendation of proposed water projects seeking financial assistance, including the consideration of project revenues, local cost-sharing, and ability to pay. The rules may also include provisions for repayment of a portion of the funds allocated from the resources trust fund.

Grants to advance certain water projects - The Legislative Assembly, in House Bill No. 1269, provided \$21,000,000 from the resources trust fund for additional construction on the Southwest Pipeline Project and \$10,350,000 from the resources trust fund for grants to advance projects, including Stutsman County Rural Water, North Central Rural Water Consortium, and McLean-Sheridan Rural Water Projects. This bill contained an emergency clause and was signed by the Governor on February 19, 2013.

Infrastructure revolving loan fund - The Legislative Assembly in Senate Bill No. 2233 allocates a portion of the oil extraction tax to the newly created

The State Water Commission reported to the Budget Section in September 2013 and March 2014. The State Water Commission has not changed the project priority as it was presented to the Legislative Assembly in 2013 but has added infrastructure projects in Dickinson, Watford City, and Williston totaling \$32 million.

Through March 2014, \$5 million of the \$15 million in additional funding has been transferred to the community water facility revolving loan fund.

The State Water Commission drafted a cost-share policy, procedure, and general requirements document and presented it to the interim Water Topics Overview Committee in April 2014. The committee has not yet acted on the document.

The State Water Commission has approved \$10,000,000 for the Stutsman County Rural Water system, \$299,300 for the North Central Rural Water Consortium, and \$100,000 for McLean-Sheridan Rural Water Projects. Through April 2014, the State Water Commission has provided \$11,895,868 for the Southwest Pipeline Project, \$2,892,269 for the Stutsman County Rural Water system, and \$265,959 for the North Central Rural Water Consortium. There have been no reimbursements made for McLean-Sheridan Rural Water Projects.

Because this section is not effective until January 1, 2015, no funds have been allocated.

infrastructure revolving loan fund established within the resources trust fund. Effective January 1, 2015, the bill provides 10 percent of oil extraction tax revenue deposited in the resources trust fund is to be made available on a continuing basis to provide loans for water supply, flood protection, or other water development and water management projects. Loans are approved by the State Water Commission and administered by the Bank of North Dakota. The estimated effect of Senate Bill No. 2233 on oil extraction tax allocations during the 2013-15 biennium is based on production levels used for the February 2013 legislative revenue forecast and revenue allocations during the period January 2015 through June 2015. Based on production levels used for the February 2013 legislative revenue forecast and revenue allocations during the period January 2015 through June 2015, an estimated \$16.9 million within the resources trust fund would be designated for the infrastructure revolving loan fund during the 2013-15 biennium.

Information technology relocation and consolidation study - In Section 8 of 2013 Senate Bill No. 2021, the Legislative Assembly appropriated \$200,000 from the general fund to the Office of Management and Budget to contract with a private consultant to conduct an information technology relocation and consolidation study of hardware used by the Attorney General's office, the Public Service Commission, the Department of Mineral Resources, and the State Water Commission.

The Office of Management and Budget contracted with UmmelGroup International, Inc., for \$182,970 to conduct the study. The results of the study included the recommendation to consolidate and relocate the information technology hardware from the Public Service Commission, the Department of Mineral Resources, and the State Water Commission to the Information Technology Department. The potential benefits of consolidation include enhanced security, improved backup and redundancy measures, and possible time-savings for the agencies' information technology staff.